SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1137

R. R. STONE, TRADING AS STONE TOWING LINE, CHARTERER *pro hac vice* OF GAS SCREW TUG STONE 6,
Petitioner,

vs.

DIAMOND STEAMSHIP TRANSPORTATION CORPORATION AND TEXAS GULF SULPHUR COMPANY, INC.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

References to the Findings of Facts and Conclusions of Law and Final Decree in the District Court below, and to the Opinion of the Circuit Court of Appeals below, as well as a statement of the case and specification of errors to be urged in the petition for a writ of certiorari, supra, will not be repeated.

I

Opinions Below

The District Court rendered no opinion, but filed Findings of Fact, Conclusions of Law, and a Final Decree (R. 98 to 100).

The opinion (R. 148) of the Circuit Court of Appeals is reported in 152 F. (2d) 916.

The petitioner presents to this Court and files herewith as an exhibit herein, a duly certified printed transcript of those parts of the record in this case as stipulated by counsel for all of the parties hereto; and the Clerk of the United States Circuit Court of Appeals, Fourth Circuit, has duly delivered a certified transcript of the record in his Court to the Clerk of this Court.

II

Jurisdictional Statement

Jurisdiction to review this case upon a writ of certiorari is expressly conferred upon this Court by Judicial Code, Section 240, as amended (Act of March 3, 1891, c. 517, Section 6, 28 Stat. 828; Act of March 3, 1911, c. 231, Section 240, 36 Stat. 1157; Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938; U. S. C. A. (Title 28, Section 347).

A timely petition for rehearing was made to the Circuit Court of Appeals (R. 168, 169), and was denied March 12, 1946 (R. 182).

III

Statement of the Case

Reference is here made to the statement of the case as it appears in the petition, supra, and, as it is believed it is a sufficient statement of the case, it will not, in the interest of brevity, be repeated at this point.

IV

Specification of Errors

1. The Circuit Court of Appeals, erred in finding and holding that, because the District Judge, after he had reached his conclusion in the case following a "• • •

study of the case and checking the authorities cited by all parties hereto, and after much thought and consideration * * *", then substantially accepted signed and filed findings and decree drafted by counsel for petitioner, and submitted to him, at his request, after full notice to all counsel and the refusal of counsel for damage claimants to submit counter papers.

2. The Circuit Court of Appeals, erred in failing to hold that after the adoption of Admiralty Rule 46½ the Appellate Court should not treat the final decree in the District Court as "wholly vacated," and should not disturb Findings of Fact and Conclusions of Law of the Trial Judge where same are abundantly supported by evidence.

3. The Circuit Court of Appeals, erred in holding there is a presumption of fault against the petitioner, R. R. Stone, charterer *pro hac vice* of the tug STONE 6.

4. The Circuit Court of Appeals, erred in holding that the privity or knowledge of H. B. Stone, Manager for petitioner, R. R. Stone, was imputable to R. R. Stone, an individual, in re his petition for exoneration from and limitations of liability.

5. The Circuit Court of Appeals, erred in holding that petitioner, R. R. Stone, was not a charterer of the tug STONE 6, but was a bailee, or trustee thereof *ex malficio*, and, therefore, not within the provisions of Section 4286 of the Revised Statutes of the United States (Title 46, Section 186, U. S. C. A.).

V

ARGUMENT

It is the purpose of this argument to show that the Circuit Court of Appeals in the errors specified against it, *supra*, has made holdings contrary to and in conflict with the holdings of other Circuit Courts of Appeal, and contrary to, and in conflict with the holdings of this Honorable Court.

Point I

The Circuit Court of Appeals has misunderstood and misapplied the true purpose and effect of Admiralty Rule 46½ (Appendix 1).

While Rule No. 52 of the Federal Rules of Civil Procedure (Appendix, 2) is not applicable to admiralty cases, its provisions are so similar to those of Admiralty Rule 46½ that the courts have held that the requirements of the two rules are quite the same. The Marguerite, 140 F. (2d) 491 (C. C. A. 7). At the time of the adoption of each of these rules, the procedure and method to be followed by the district courts in meeting the requirements of the rules has been considered. It has always been recognized that there would be differences in procedure and practice among the district courts.

The Circuit Court of Appeals in its opinion (R. 150), after commenting on the fact that in the case at bar the District Judge had written no opinion, but had requested Counsel to present Findings of Fact and Conclusions of Law, and then substantially adopted same, held that they were "* * * not entitled to the same weight and dignity which they would have possessed if they represented the unfettered and independent judgment of the Trial Judge. * * *"

It is strange that the Circuit Court of Appeals below should say in effect that because the Trial Judge below had requested the usual assistance of counsel, he had not exercised his unfettered and independent judgment when the admiralty rules of the several maritime districts have recognized the practice. These rules appear in Volume 5, of Benedict on Admiralty, and will be found in Appendix hereto, as follows:

Appendix p. 34 for the Eastern District of New York.
Appendix p. 35 for the Western District of New York.

Appendix p. 34 for the Northern and Southern Districts of New York.
Appendix p. 35 for the Eastern District of Virginia.
Appendix p. 35 for the Northern and Southern Districts of Florida.
Appendix p. 35 for the Canal Zone.
Appendix p. 36 for the Western District of Kentucky.
Appendix p. 36 for the Northern District of California.

All above admiralty rules contemplate and definitely provide that the District Judge may request counsel of either or both of the parties to prepare findings of fact, conclusions of law and a decree embracing same.

In Benedict on Admiralty, Vol. 3, pp. 122-3, it is stated:

> "• • • The practice under Rule 46½ has not been uniform. The great majority of opinions are composed more or less informally, ending with an invitation to the proctors to submit proposed findings and conclusions if they should deem the opinion insufficient. • • •"

In the case at bar this is precisely what the Trial Judge did in his letter of November 24, 1945, to proctor for petitioner (R. 105).

Mr. Justice Frankfurter and Mr. James M. Landis in their article in 44 Harvard Law Review 1, 35, in speaking of the workability of Admiralty Rule 46½, said:

> "• • • the district courts will have to work out an effective procedure for conforming to the Court's under the rules. There will be variations of practice in different district courts and in different cases. At times the trial court will itself draft the findings; *in other instances proposed findings will be submitted by counsel for the courts' approval.* • • •" (Italics supplied.)

The practice of the District Judge to request counsel to submit proposed findings and conclusions and a decree

embracing same, has been recognized and approved by other Circuit Courts of Appeal.

In *Matton Oil Transfer Corporation* v. *The Dynamic et al.*, 123 F. (2d) 999, the United States Circuit Court of Appeals, Second Circuit, said:

> "* * * Admiralty Rule 46½, adopted by the Supreme Court in 1930, 28 U. S. C. A. following Section 723, requires that 'the court of first instance shall find the facts and state separately its conclusions of law thereon; and its findings and conclusions shall be entered of record, and if an appeal is taken from the decree, shall be included by the clerk in the record' certified to the appellate court. This, of course, is quite similar to the former Equity Rule 70½, 28 U. S. C. A. Sec. 723, Appendix, which has been continued in substance in Federal Rules of Civil Procedure, Rule 52(a), 28 U. S. C. A. following section 723c. As we have regularly held, the substance of the admiralty rule requires, as in ordinary civil actions, that we should give due weight to the findings of fact made by the Trial Judge, who has had the opportunity to see the witnesses as they testified and thus determine the truth of disputed testimony in ways not open merely on inspection of a printed appellate record. * * *"
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> "* * * Of course, we do not mean to imply that a trial court is not privileged to seek such aid of counsel, both as to the facts and the law, as it thinks desirable prior to and as a step in decision; or to limit or restrict in any way the procedure for amending or otherwise correcting findings set forth in F.R.C.P. (52(b)). Nor do we wish to preclude the trial court from preparing an opinion for that can be most illuminating and helpful to an appellate court. * * *"

In *Schilling* v. *Schwitzer-Cummins Co.* (D. C.) 142 F. (2d) 82, p. 83, the Circuit Court of Appeals for the District of Columbia, said:

"* * * In its preliminary memorandum opinion the trial court found the facts to be 'substantially as claimed by the defendant * * *' and directed counsel to draft findings. Appellants contend this is not a commendable procedure; that the findings subsequently made are entitled to no weight; and, consequently, that the case should be considered by this court, on the evidence, *de novo*. Assuming the correctness of the premise, the conclusion does not follow. In such a situation as that of the present case, if adequate findings had not been made, the proper procedure would be to remand the case to the trial court and direct that new findings be made. 1. It is not the function of an appellate court to assume the powers of the trial court; which it would do, necessarily, if it tried *de novo*, such a case as the present 2

However, the premises assumed by appellants is incorrect. Whatever may be the most commendable method of preparing findings—whether by a judge alone, or with the assistance of his court reporter, his law clerk and his secretary, or from a draft submitted by counsel—may well depend upon the case, the judge, and facilities available to him. 3. If inadequate findings result from improper reliance upon drafts prepared by counsel—or from any other cause—it is the result and not the source that is objectionable. 4 It is no more appropriate to tell a trial judge he must refrain from using or requiring the assistance of able counsel, 5 in preparing his findings, than it would be to tell an appellate judge he must write his opinion without the aid of briefs and oral argument. What the law requires in this respect is that the findings as made, shall be those of the trial judge himself. 6 The ultimate test as to the adequacy of findings will always be whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision, 7 and whether they are supported by the evidence. 8 To the extent that they are, in addition, concisely stated, nonargumentative in form, free from conclusions of law 9 and from the redundancy so frequently found in pleadings,

they will be more useful to all concerned. 10 While counsel may be disappointed that findings do not discuss propositions sincerely contended for, that, alone, does not make them inadequate or suggest that such propositions were not understood by the court. A decision, as between two contestants, necessarily rejects contentions made by one or the other. The Bar—other than counsel who participate in each particular case—complains, only too frequently, of the length of decisions in appellate courts, which results from judicial efforts to reflect consideration of contentions made by both parties. Certainly we should not require or encourage trial judges, in preparing findings, to assert the negative of each rejected contention as well as the affirmative of those which they find to be correct. • • •"

In the case of *Esso, Inc.* v. *Standard Oil Co.*, 98 F. (2d) p. 4 and p. 5, the Circuit Court of Appeals for the Eighth Circuit, after referring to the suggestion that the findings of fact and conclusions of law of the District Court had been prepared by plaintiff's counsel, the Court said:

"• • • It was not improper for counsel to prepare and present to the court proposed findings of fact and conclusions of law, and the findings when adopted and signed by the court became the court's findings. It is as much the function of counsel to present his arguments and views as to the facts as it is to present such argument and views as to the law. An examination of the record convinces that the findings of the court are sustained by abundant evidence. These findings, therefore, conclusively answer defendant's contention 1, 2 and 3. • • •"

In the case of the *United States* v. *Crescent Amusement Company*, 123 U. S. 173, 184-5, this Honorable Court said:

"• • • The defendants finally object to the findings on the ground that they were mainly taken verbatim from the Government's brief. The findings

leave much to be desired in the light of the function of the trial court. See United States v. Forness, 2 Cir. 125 F.(2d) 928, 942, 943. But they must stand or fall depending on whether they are supported by evidence. We think they are. * * *"

Point II

The Circuit Court of Appeals below erred in treating the decree of the District Court below as "wholly vacated" and in disregarding the findings of fact and conclusions of law of the trial judge.

The Circuit Court of Appeals (Opinion R. 153), said:

"* * * Appellees attempt to explain the collision on the ground that the Severance was a 'cranky' vessel and difficult to handle; that her engine response was faulty and her steering gear defective. *We are not impressed by these contentions.* Appellees knew what nature of ship she was before the contract was made, or the voyage up the river was started. *The testimony of Captain Dosher, Peders and Cudworth is far from convincing. This was more than offset by the testimony of the officers and crew of the* Severance. * * *." (Italics supplied.)

The Circuit Court of Appeals has thus substituted its own reaction from the cold type of the record for the considered reaction of the Trial Judge who saw and heard the witnesses, and was able to weigh and measure the testimony. The above quotation from the opinion of the Circuit Court of Appeals to the effect that the testimony "* * * of the officers and crew of the Severance * * *" more than offset the testimony of witnesses for the petitioner, is misleading, because the only people from the crew of the Severance who testified were Hardy, her Master, and Arthur Cooper, her Third Mate. Hardy (R. 126), had left

the bridge and gone to lunch before the steamship sheered, and Arthur Cooper, the Third Mate (R. 78) had never before been up the river, and testified (R. 133) in a deposition, to a tide "running like a mill race" whereas the Trial Judge in that connection had the opportunity of observing and hearing Captain Paul C. Whitney, United States Coast & Geodetic Survey (R. 47-50). Chaptain Whitney installed the tide gauge at Wilmington Harbor, had studied the tides and currents of Wilmington Harbor, and had for ten years been Chief of the Section of Tides and Currents for the United States Coast & Geodetic Survey, and testified and demonstrated by the official records of that Service that a condition existed exactly as Hardy, the Master of the SEVERANCE testified when he said (R. 75): "The tide was low water slack; there was no current in the river." However, the Circuit Court of Appeals makes no mention in its opinion of the testimony of Captain Whitney, and speaks of the testimony of "officers and crew of the SEVERANCE" as offsetting the evidence offered by petitioner, whereas in fact, the only testimony offered by the damage claimants in re the tidal conditions, was that of the Third Mate, Cooper.

The Circuit Court of Appeals concluded that Captain Dosher's testimony at the trial, was discredited by his testimony before the Steamboat Inspectors (R. 12), and seems to have entirely lost sight of Captain Dosher's explanation of his testimony before the Steamboat Inspectors which was that (R. 23) "We (meaning himself and the Inspectors), were discussing some possibility or likelihood as a cause for that sheer." Nor did the Circuit Court of Appeals explain why they should reject the testimony of Captain Peders who had piloted the SEVERANCE from Charleston, South Carolina to Wilmington, North Carolina, and who is corroborated by Third Mate Cooper (R. 85, 86) when he testified (R. 39) that it was very difficult to keep

the SEVERANCE on a straight course proceeding up the river from the bar, and that coming out of Charleston (R. 39) the Chief Mate of the SEVERANCE told the Captain of the SEVERANCE that the rudder chain of the SEVERANCE was slack.

Nor does the Circuit Court of Appeals explain why it should hold there was a contract that the SEVERANCE "was to be towed", and that at the time of the disaster the SEVERANCE "was under tow." It is an undisputed fact that the contract (H. B. Stone, R. 6) was for "tug service" and that at the time of the sheer the SEVERANCE was proceeding under her own power, and at no time prior to the sheer did the tug pull, but at all times was ahead of the ship on a slack hawser.

Nor does the Circuit Court of Appeals explain why, because Captain Dosher said (R. 139) after the disaster, that a tug on the ship's starboard quarter would have prevented the sheer that had any significance that the STONE 6 was not of sufficient power or properly placed. Captains Dosher, Peders, Debnam, Cudworth and Joseph Norman Cooper, all experienced tugboat men, say the STONE 6 was properly placed and of ample power. (Dosher, 25; Peders, 43; Debnam, 55; Cudworth, 59. The case was tried about four and a half years after the disaster and no witnesses were offered to suggest that the STONE 6 was not properly placed or of sufficient power. There is not a word to suggest that Captain Dosher had any notice the SEVERANCE was going to sheer. There was no occasion before the sheer for Captain Dosher to complain about the steering of the SEVERANCE in the few minutes he was on her bridge before she sheered. What the Circuit Court of Appeals has done is to judge Captain Dosher by "hindsight", instead of by "foresight." Nor has the Circuit Court of Appeals, below noted

that the title of T. H. Stone to the tug "STONE 6", is of record nearly six months before he was adjudged an incompetent R. 3), and that the charter party, the existence of which it denies, was actually in operation for many years; and that the charterer's arrears of charter hire can have no relation to the existence of the charter, because the incompetent's guardian will collect from a solvent charterer.

It is not intended here to argue the merits in re the question of negligence, but we make the foregoing statements in order to show how clearly the Circuit Court of Appeals has treated the decree of the District Court below as "wholly vacated" and has failed to give any weight whatever to the Findings of Fact of the Trial Judge below.

There seems to have been no doubt on the part of the Circuit Court of Appeals as to its right to disregard the findings of the Trial Judge. *But there is grave doubt of that right.*

The Circuit Court of Appeals for the 9th Circuit has asserted such doubt in the case of The Ernest H. Meyer, 84 F. (2d) 496, 499. There, after stating the history of the law of "Admiralty Review," and quoting Admiralty Rule 46½, that court said:

> "* * * It is apparent that the requirement for such findings must mean that the decree of the district court has some significant effect; that it is not to be regarded as vacated; *and that the new trial in a circuit court of appeal* cannot now regard a decree based on such findings as though it had never been rendered. * * *" (Italics supplied.)

That court then reviewed the decision of this Honorable Court in the case of *McCrea* v. *U. S.*, 294 U. S. 382, 383, and then says:

> "* * * It is arguable that the court (Supreme Court) means that there is a difference between a "suf-

ficiency of the evidence to support the finding," and the evidence which precludes an inference that any other finding has support in the evidence; that the first means that if there are several inferences from the evidence, the appellate court is confined to that one found by the court below if it can be supported, and that it can be set aside only if there is but one inference of the challenged finding; that because on writ of error a finding must not be disturbed if there is a sufficiency of the evidence to support it, the same rule now governs admiralty appeals; that when we "weigh the evidence" we find the scales tipped in favor of the appellee when the record discloses sufficient evidence from which the trial court could make the particular inference in its finding; that is, that we need not weigh the *whole evidence* and draw our own inference whether it makes "manifest" that some different finding should be made. In other words that, by the promulgation of Rule 46½ requiring findings, the Supreme Court has converted the admiralty appeal into a proceeding in effect as on writ of error.

"It is difficult to believe that, after our broad power in new trials in admiralty appeals recognized by the Supreme Court in 1932 in Brooklyn Dist. Terminal v. U. S., supra, that court without even mentioning in the McCrea Case that it is considering any change in the new trial as effected by Rule 46½ there intended to hold that new trials had been abolished, and that we should consider the case as if brought here by writ of error. *Until in this or some other case the Supreme Court shall clear up the doubt, we therefore adhere* to the rule as stated in the Andrea F. Luckenbach (C.C.A.) 78 F. (2d) 827, 828, as follows: 'The well-established rule is applicable that the decision of the trial court in admiralty cases upon controverted questions of fact, will not be disturbed by the appellate court unless clearly against *the weight* of the evidence' * * *" (Italics supplied.)

Showing a tendency to the adoption of the same thought expressed by the 9th Circuit, *supra,* the Circuit Court of

Appeals for the Second Circuit has, in the case of *City of New York* v. *National Bulk Carriers, Inc.*, 138 F. (2d) 826, 827, even threatened to discipline proctors who request it to disturb the findings of the trial judge when there is evidence to support same. In that case the court said:

> "* * * It appears to be impossible to convince the bar that we will disturb findings of fact as seldom in admiralty cases as any other. Whether there lingers a notion—never in fact justified—that because an appeal in admiralty is a new trial, the scope of our review is broader, we cannot know; but over and over again appeals are taken without the least chance of success except by their citing findings of fact upon disputed evidence. In order to meet this persistence we may in the end find ourselves forced to invoke the penalty provided in Rule 28(2) of this court."

Nowhere is it a clearer statement of the correct rule that should have been applied in the case at bar than in the decision of the Fourth Circuit in the case of the District of Columbia, 74 F. (2d).

> "* * * Where there was a conflict of evidence or a possibility of lack of veracity involved, the trial judge is presumed to have been guided in his conclusions by those evidences of demeanor so helpful to one of experience in weighing human testimony as well as by the probabilities supported by knowledge experience where honest differences were apparent. His expressed convictions, therefore, entitled to great respect and not to be lightly reversed, must be shown to be contrary to the weight of the evidence in order to justify a reversal. * * *"

Point III

There is no presumption of fault against petitioner in this case.

The Circuit Court of Appeals (Opinion R. 152) says:

> "* * * We start with the rule that when the Severance, in complete control of Dosher in waters with which he was familiar on a clear day with a light wind, ran into a readily visible stationary object, the piling of the bridge, this raises a presumption of negligence on Dosher's part that at least calls for some reasonable explanation of the collision. * * *"

The cases supporting that holding are all cases that involve collisions between moving vessels with bridges and moored or anchored vessels. The Circuit Court of Appeals has overlooked the fact that it is not dealing with an issue of liability between a moored or anchored vessel, or a bridge on the one hand, and a moving vessel on the other, but that it is considering an issue of liability of petitioner, R. R. Stone, an independent contractor for negligence of his employee, Captain Dosher. The true rule applicable here is stated by the Circuit Court of Appeals, Fourth Circuit, upon the authority of this Honorable Court in the case of The White City, 285, U. S. 195. The following quotation from the opinion of the Circuit Court of Appeals, Fourth Circuit in the case of *Standard Transportation Company* v. *Wood Towing Corporation,* 64 F. (2d) 282, 283-5, leaves nothing more to be said toward establishing the conflict of the decision in the case at bar, with the decision of this Honorable Court in *The White City* case:

> "* * * It was held by the Supreme Court in Stevens v. The White City, 285 U. S. 195, 52 S. Ct., 347, 350, 76 L. Ed. 699, that in such a situation as here existed, the owner of the tug owed the owner of the steamship

only '• • • the duty to exercise such reasonable care and maritime skill as prudent navigators employ for the performance of similar service. The burden was upon petitioner to show that the loss for which he sought recovery was caused by a breach of the duty'. The captain of the steamship was on the bridge with the captain of the tug, and throughout the entire occurrence made no complaint as to the handling of the steamship by the tugmaster, nor was any complaint as to the conduct of the tugmaster made in any form until the filing of this libel."

"• • • The tug does not have exclusive control over the tow, but only so far as is necessary to enable the tug and those in charge of her, to fulfill the engagement. They do not have control such as belongs to common carriers and other appellees. They have no authority over the master or hands of the towed vessel beyond such as is required to govern the movements of the flotilla. In all other responsibilities and for all other purposes the vessel in tow, its cargo and crew remain under the authority of its master and in emergency the duty is upon him to determine what shall be done for the safety of his vessel and her cargo. In such cases the right of decision belongs to the master of the tow, and not to the master of the tug." Stevens v. The White City, supra. See, also, the Ashwaurbemie (C. C. A.) 3 F. (2d) 782.

Point IV

The Circuit Court of Appeals erred in holding that any knowledge of H. B. Stone about river conditions and power of the tug "Stone 6" is imputable to petitioner, R. R. Stone.

The Circuit Court of Appeals, below, has said (R. 160) in its opinion:

"It would thus seem that the knowledge and privity of H. B. Stone is that of R. R. Stone. The Robert H. Smith, 3 F. Supp. 531, 1933 A.M.C. 741; The Marguerite W., 1943 A.M.C. 333, 49 F. Supp. 929, 1940 A.M.C.

367, 140 F. (2d) 491; The Chickie, 1944 A.M.C. 635, 54 F. Supp. 19; Eastern Steamship Co. v. Great Lakes Dredge and Dock Co., 256 Fed. 497."

In the case of *Coryell* v. *Phipps*, 317 U. S. 406, the Supreme Court said:

> "In the case of individual owners it has been commonly held or declared that privity as used in the statute means some personal participation of the owner in the fault of negligence which caused or cantributed to the loss or injury. The 84-E, 2 Cir. 296 F.427; Warnken v. Moody, 5 Cir., 22 F. (2d) 960; Flat-Top Fuel Co. v. Martin, 2 Cir., 85 F. (2d) 39; and see La Bourgogne, 210 U. S. 96, 122, 28 S. Ct. 684, 673, 52 L. Ed. 973; Richardson v. Harmon, 232 U. S. 96, 103, 32 S. Ct. 27, 39, 56 L. Ed. 110; 3 Benedict, Admiralty (6th Ed.) Section 489. That construction stems from the well settled policy to administer the statute not '*with a tight and grudging hand*' (Mr. Justice Bradley in Providence & New York S. S. Co. v. Hill Mfg. Co., 109 U. S. 578, 589, 3 S. Ct., 379, 385, 27 L. Ed. 1038) *but broadly and liberally*" *so as* '*to achieve its purpose to encourage investments in shipbuilding and to afford an opportunity for the determination of claims against the vessel and its owner.*' Just v. Chambers, 312 U. S. 383, 385, 81 S. Ct. 637, 690, 85 L. Ed. 903. And see Larsen v. Northland Transportation Co., 352 U. S. 20, 24, 54 S. Ct. 584, 585, 78 L. Ed. 612; Richardson v. Hampton, supra, 222 U. S. page 103, 32 S. Ct. page 29, 56, L. Ed. 110." (Italics supplied.)

The conflict here is too obvious to need any comment other than to state that the conflict with the law as declared by this Honorable Court, and the holding of the Circuit Court of Appeals is emphasized by the fact that the cases cited by the Circuit Court of Appeals in support of this holding are all cases in which corporations were petitioners in limitation of liability proceedings. The Circuit Court of Appeals here has obviously overlooked the correct rule, and

the fact that petitioner, R. R. Stone is an individual, and that (R. 69) he testified without any contradiction that he never heard of the SEVERANCE until some hours after the disaster.

Conclusion

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the decision of the United States Circuit of Appeals announced on December 27, 1945, and its order in said cause entered on March 12, 1946 denying the petitioner herein a rehearing be reversed and set aside and to that end a writ of certiorari should be granted, and this Court should review the decision of the United States Circuit Court of Appeals, Fourth Circuit, and finally reverse it.

R. R. STONE, trading as STONE TOWING LINE charterer of the gas screw tug STONE 6.
By JOHN W. OAST, JR.,
Counsel for Petitioner.

JOHN W. OAST, JR.,
Counsel for Petitioner,
707 Citizens Bank Building,
Norfolk, Virginia.

April 19, 1946.